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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,602	06/30/2001	Jurgen A. Heinz	19368-086997	5734

28886 7590 12/04/2003

CLARK HILL, P.C.
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DETROIT, MI 48226

EXAMINER

NGUYEN, THONG Q

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/869,602

Applicant(s)

HEINZ, JURGEN A.

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 21, 2003 has been entered.
2. It is noted that applicant has filed a request for suspension the prosecution of the application until November 21, 2003.

The application with the request for continued examination (RCE) is examined on December 2, 2003. A careful review of the RCE and the letter filed on 8/21/2003 has resulted that applicant has not filed or intended to file any amendment for the RCE. See a copy of the RCE filed by applicant on 8/21/2003 attached with this Office action.

Oath/Declaration

3. The objection to the oath or declaration as set forth in the Office action (Paper No. 7, pages 2-3) of 8/20/2002 is repeated. It is noted that in the amendment (Paper No. 9) of 1/27/2003, applicant has stated that the applicant will file a new Oath/Declaration; however, such a new Oath/Declaration has not been received by the Office at the time the application is reexamined.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 2872

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 50-53 and 57-68 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

a) Claim 50 is rejected under 35 USC 112, first paragraph because the specification fails to provide sufficient information/details to enable one skilled in the art to make the device without undue experimentation. In particular, the specification discloses a control device having a sheet-like heating resistor, a circuit having at least one resistor and one transistor, see specification pages 7 and 9 and figs. 4, for example; however, the specification fails to provide sufficient data for the resistor(s) and the transistor(s) so that the voltage outputted from the circuit is in the range of zero volts to 2.5 volts. In other words, what kind of resistor and what is the value of the resistor, etc... being used so that the control voltage is in the range claimed?

b) Each of claims 52 and 57 is rejected under 35 USC 112, first paragraph for the similar reason as set forth in element a) above.

c) The remaining claims are dependent upon the rejected base claims and thus inherit the deficiencies thereof.

6. Claims 45-68 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

Art Unit: 2872

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

a) Claim 45 is rejected under 35 USC 112, second paragraph because it is unclear how many voltages being applied to the electrochromic mirror and the heating element as recited in the features thereof "a rearview mirror...electrochromic mirror" (lines 3-13). In particular, as recited in the mentioned features, the electrochromic mirror and the heating element are subjected to two kind of voltages, one from the vehicle power supply (see lines 7-8) and the other from the control voltage (lines 9-13). However, the use of two kinds of voltages for the electrochromic mirror and the heating element is not supported by the specification as originally filed.

b) Claim 57 is rejected for the similar reason as set forth in element a) above.

c) The remaining claims are dependent upon the rejected base claims and thus inherit the deficiencies thereof.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 48 and 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a) In claim 48 on line 2: the terms "said control signal" lack a proper antecedent basis, and also unclear about the component(s) being used to produce such a feature.

Art Unit: 2872

b) Claim 60 is rejected under 35 USC 112, second paragraph for the similar reason as set forth in element a) above.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 45-47, 49, 54 and 55, as best as understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Schierbeek et al (U.S. Patent No. 5,659,423, of record).

Schierbeek et al discloses a modular variable reflectance mirror assembly for use with a vehicle having a vehicle power supply or 12 volts or an ignition voltage of 9 to 16 volts. The mirror assembly as described in columns 4-7 and shown in figures 1-3 comprises an electrochromic mirror (16) having a front surface and a rear surface; a heating element (20) located on the rear of the electrochromic mirror and in thermal contact with the electrochromic mirror wherein the mirror and the heating element are operated via the power provided by the vehicle voltage or the ignition voltage. As described in columns 5-7 and fig. 3, the mirror assembly comprises a control circuit having sensors whose outputs are used to control the reflectant level of the mirror and transistors, resistors, comparators, etc.... It is noted that a circuit branch from the vehicle voltage (V) to ground comprises a resistor (R24) and two transistors (Q1 and Q2) connected in series wherein the electrochromic having the heating element in connection thereof is connected in parallel to the transistor (Q2). As a result, the voltage used to

Art Unit: 2872

control the electrochromic mirror having the heating element is less than the vehicle voltage (V0 due to the heat dissipated by the presence of the resistor (R24) and the operation of the transistor (Q1).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schierbeek et al.

The mirror assembly as provided by Schierbeek et al does not disclose that the transistor (Q2) is able to connect to the electrochromic mirror in a series manner; however, such a connection as claimed is merely that of a preferred embodiment and no criticality has been disclosed. The support fort that conclusion is found in the present specification and also in present claim 55 in which applicant has admitted that the connection between the transistor and the mirror is a parallel connection. Thus, absent any showing of criticality, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the assembly provided by Schierbeek et al by connection the transistor and the mirror in a series connection for the controlling the distribution of the power while still providing sufficient voltage to the heating element.

Conclusion

13. This is a Request for Continued Examination of applicant's earlier Application No. 09/869,602 without any amendments being filed. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

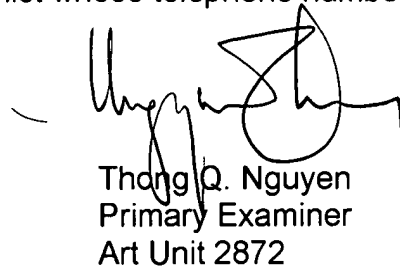
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (703) 308-4814. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Art Unit: 2872

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



Thong Q. Nguyen
Primary Examiner
Art Unit 2872
